

ANNEX XI

GENERAL NOTES

(referred to in Article 25)

PART A

GENERAL NOTES AND DEROGATIONS GOVERNING MEXICO'S OFFER SET OUT IN ANNEXES VI THROUGH X

Section 1

Transitional provisions

Notwithstanding any other provision of this Title, Annexes VI to X are subject to the following transitional provisions:

Pemex, CFE and non-energy construction

1. Mexico may set aside from the obligations of this Title for each calendar year following the entry into force of this Title the respective percentage specified in paragraph 2 of:
 - (a) the total value of procurement contracts for goods and services and any combination thereof and construction services procured by Pemex in the year that are above the thresholds set out in Annex X;
 - (b) the total value of procurement contracts for goods and services and any combination thereof and construction services procured by CFE in the year that are above the thresholds set out in Annex X; and
 - (c) the total value of procurement contracts for construction services procured in the year that are above the thresholds set out in Annex X, excluding procurement contracts for construction services procured by Pemex and CFE.
2. The percentages referred to in paragraph 1 are as follows:

Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8 and thereafter
45 %	40 %	35 %	35 %	35 %	30 %	30 %	0 %

3. The value of procurement contracts that are financed by loans from regional and multilateral financial institutions shall not be included in the calculation of the total value of procurement contracts under paragraphs 1 and 2. Procurement contracts that are financed by such loans shall also not be subject to any restrictions set out in this Title.
4. Mexico shall ensure that the total value of the procurement contracts under any single FSC class (or other classification system agreed by the Parties) that are set aside by Pemex or CFE under paragraphs 1 and 2 for any calendar year does not exceed 15 % of the total value of the procurement contracts that may be set aside by Pemex or CFE for that year.
5. Mexico shall ensure that after 31 December of the fourth year following the entry into force of this Title, Pemex and CFE each shall make all reasonable efforts to assure that the total value of procurement contracts under any single FSC class (or other classification system as agreed by the Parties) that are set aside by Pemex or CFE under paragraphs 1 and 2 for any year does not exceed 50 % of the total value of all Pemex or CFE procurement contracts under that FSC class (or other classification system as agreed by the Parties) for that year.

Pharmaceuticals

6. Until 1 January of the eighth year following its entry into force, this Title shall not apply to the procurement by the Secretaría de Salud, IMSS, ISSSTE, Secretaría de la Defensa Nacional and the Secretaría de Marina of drugs that are not currently patented in Mexico or whose Mexican patents have expired. Nothing in this paragraph shall prejudice protection of intellectual property rights.

Section 2

Permanent provisions

1. This Title does not apply to procurements made:
 - (a) with a view to commercial resale by Government owned retail stores;
 - (b) pursuant to loans from regional or multilateral financial institutions to the extent that different procedures are imposed by such institutions (except for national content requirements);
 - (c) by one entity from another entity of Mexico; or
 - (d) for the purchase of water and for the supply of energy or of fuels for the production of energy.
2. This Title does not apply to public utility services (including telecommunication, transmission, water and energy services).
3. This Title does not apply to any transportation services including: land transportation (CPC 71); water transport (CPC 72); air transport (CPC 73); supporting and auxiliary transport (CPC 74); post and telecommunication (CPC 75); repair services of other transport equipment, on a fee or contractual basis (CPC 8868).
4. This Title does not apply to the procurement of transportation services that form a part of, or are incidental to, a procurement contract.
5. This Title does not apply to financial services; research and development services; and management and operation contracts awarded to federally funded research and development centres or related to carrying out government, sponsored research programs.
6. Notwithstanding any other provision in this Title, Mexico may set aside procurement contracts from the obligations of this Title, subject to the following:
 - (a) the total value of the contracts set aside may not exceed the Mexican peso equivalent of:
 - (i) USD 1,0 billion in each year until 31 December of the seventh year following the entry into force of this Title, which may be allocated by all entities except Pemex and CFE;
 - (ii) USD 1,8 billion in each year beginning 1 January of the eighth year following the entry into force of this Title, which may be allocated by all entities;
 - (b) no entity subject to subparagraph (a) may set aside contracts in any year of a value of more than 20 % of the total value of contracts that may be set aside for that year.
 - (c) the total value of the contracts set aside by Pemex or CFE may not exceed the Mexican peso equivalent of USD 720 million in each calendar year, beginning 1 January of the eighth year following the entry into force of this Title.
7. Beginning one year after the date of entry into force of this Title, the dollar values referred to in paragraph 6 shall be adjusted annually for cumulative inflation from the date of entry into force of this Title, based on the implicit price deflator for the United States Gross Domestic Product (USGDP) or any successor index published by the Council of Economic Advisors in *Economic Indicators*.

The dollar values adjusted for cumulative inflation up to January of each year following 2000 shall be equal to the original dollar values multiplied by the ratio of:

- (a) the implicit USGDP price deflator or any successor index published by the Council of Economic Advisors in *Economic Indicators*, current as of January of that year, to
- (b) the implicit USGDP price deflator or any successor index published by the Council of Economic Advisors in *Economic Indicators*, current as of the date of entry into force of this Title,

provided that the price deflators under subparagraph (a) and (b) have the same base year. The resulting adjusted dollar values shall be rounded to the nearest million dollars.

- 8. The national security exception provided for in Article 13 of the Agreement covers procurements made in support of safeguarding nuclear materials or technology.
- 9. Notwithstanding any other provision of this Title, an entity may impose a local content requirement of no more than:
 - (a) 40 % for labour-intensive turnkey or major integrated projects; or
 - (b) 25 % for capital-intensive turnkey or major integrated projects.

For purposes of this paragraph, a 'turnkey or major integrated project' means, in general, a construction, supply or installation project undertaken by a person pursuant to a right granted by an entity with respect to which:

- (a) the prime contractor is vested with the authority to select the general contractors or subcontractors;
 - (b) neither the Government of Mexico nor its entities fund the project;
 - (c) the person bears the risks associated with non-performance; and
 - (d) the facility will be operated by an entity or through a procurement contract of that entity.
- 10. Notwithstanding the thresholds set out in Annex X, Article 26 applies to any procurement from locally-established suppliers of oil and gas field supplies or equipment by Pemex at any project site where it performs works.
 - 11. In the event that Mexico exceeds in any given year the total value of contracts it may set aside for that year in accordance with point 6 or points 1, 2 and 4 of Section 1, Mexico shall consult with the Community with a view to agreement on compensation in the form of additional procurement opportunities during the following year. The consultations shall be without prejudice to the rights of any Party under Title VI.
 - 12. Nothing in this Title shall be construed to require Pemex to enter into risk-sharing contracts.

PART B

GENERAL NOTES AND DEROGATIONS GOVERNING THE COMMUNITY'S OFFER SET OUT IN ANNEXES VI TO X

- 1. This Title shall not apply to contracts awarded under:
 - (a) an international agreement and intended for the joint implementation or exploitation of a project by the signatory Parties;
 - (b) an international agreement relating to the stationing of troops;
 - (c) the particular procedure of an international organisation; or
 - (d) aid programmes maintained by the Community or its Member States to the benefit of third countries.

2. This Title shall not apply to procurement of agricultural products made in furtherance of agricultural support programmes and human feeding programmes.
 3. This Title shall not apply to procurements by entities in Sections 1 and 3 of Annex VI.B in connection with activities in the fields of drinking water, energy, transport or telecommunications.
 4. This Title shall not apply to contracts awarded by entities in Section 2 of Annex VI.B:
 - (a) for the purchase of water and for the supply of energy or of fuels for the production of energy;
 - (b) for purposes other than the pursuit of their activities as described in this Annex or for the pursuit of such activities in a non-member country;
 - (c) for purposes of resale or hire to third parties, provided that the contracting entity enjoys no special or exclusive right to sell or hire the subject of such contracts and other entities are free to sell or hire it under the same conditions as the contracting entity.
 5. This Title shall not apply to contracts:
 - (a) for the acquisition or rental of land, existing buildings, or other immovable property or concerning rights thereon;
 - (b) for the acquisition, development, production or coproduction of programme material by broadcasters and contracts for broadcasting time.
 6. The provision of services, including construction services, in the context of procurement procedures according to this Title is subject to the conditions and qualifications for market access and national treatment as will be required by Austria in conformity with its commitments under the General Agreement on trade in services of the WTO.
 7. This Title shall not apply to contracts awarded to an entity in Finland which itself is a contracting authority within the meaning of the Public Procurement Act: 'Laki julkisista hankinnoista' (1505/92), or in Sweden within the meaning of the 'Lag om offentlig upphandling' (1992:1528), on the basis of an exclusive right which it enjoys pursuant to a law, regulation or administrative provision or to contracts of employment in Finland and Sweden, respectively.
 8. When a specific procurement may impair important national policy objectives, the Finnish or Swedish Governments, respectively, may consider it necessary in singular procurement cases to deviate from the principle of national treatment in this Title. A decision to this effect will be taken at Cabinet level. Finland also reserves its position with regard to the application of this Title to the Åland Islands (Ahvenanmaa).
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